Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

PALISADES CHARTER HIGH SCHOOL,
LOS ANGELES UNIFIED SCHOOL DISTRICT,
RONALD CUMMINGS,

Petitioners,

v.

COURTNEY KNAPP,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

JOHN S. LEVITT
PHILIP J. BONOLI*
ROBERT LANE MORRIS
SOLTMAN, LEVITT & FLAHERTY
2535 Townsgate Road
Suite 307
Westlake Village, CA 91361
(805) 497-7706

* *Counsel of Record*

Attorneys for Petitioners

209396

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the State of California has denied California public charter schools, operated as non-profit public benefit corporations, and their employees equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and in violation of Article I, Section 7(a) of the Constitution of the State of California by withholding the protections of California's Tort Claims Act from such charter schools?

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INTRODUCTION

The decision of California Supreme Court, affirming the Second Appellate District of the California Court of Appeals, subjects teachers and other employees of a public charter school operated as a non-profit public benefit corporation to personal liability and claims for punitive damages, protections against which are afforded to all other public school teachers within the State of California. Even though the California Legislature branded all charter schools as part of California's public school system, the decision below plucks a specific category of charter schools (i.e., charter schools operated as non-profit public benefit corporations) from California's public school system and labels such schools private entities for purposes of the California Tort Claims Act. By doing so, these charter schools and their teachers will no longer be entitled to the defense, indemnity, immunity and punitive damage protections afforded by California Tort Claims Act, protections which continue to apply to all other California public schools and public school teachers.

This ruling has created a rift within the California public school system. Even though such charter schools continue to be public schools in the eyes of the California Legislature, the ruling sets these public charter schools apart from the public school system and away from the protections of the Tort Claims Act. The ruling places these charter schools in limbo and nullifies the existing organization, legal and operational structures of these schools.

OPINIONS BELOW

The original published opinion of the California Court of Appeal, Second Appellate District, Division Seven (per Zelon, J.) affirming the trial court's order granting summary judgment is reprinted at App. 15a-36a. The subsequent published opinion of the California Court of Appeal, Second Appellate District, Division Seven (per Zelon, J.) reversing its original published opinion and reversing the trial court's order granting summary judgment is reprinted at App. 1a-14a. The California Supreme Court order (per George, C.J.) denying the petition for rehearing is reprinted at App. 37a and is not otherwise published.

JURISDICTION

The California Supreme Court rendered its decision on March 28, 2007. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Factual Background

On June 11, 2005, Courtney Knapp filed a complaint in the Los Angeles Superior Court entitled *Courtney Knapp, et al. v. Palisades Charter High School, et al.*, case number SC081985. The complaint asserted causes of action for sexual harassment, intentional infliction of emotional distress and negligent infliction of emotional distress against Palisades Charter High School (PCHS) (a charter school operated as a nonprofit public benefit corporation), Los Angeles Unified

School District (LAUSD) and Ronald Cummings (Mr. Cummings). In her complaint, Respondent admitted that, on March 3, 2004, she filed a claim with the County of Los Angeles. On November 5, 2004, Petitioners filed an answer to Respondent's unverified complaint. Shortly thereafter, on March 23, 2005, Petitioners filed their motion for summary judgment.

The basis of Petitioners' motion was Respondent's failure to file a governmental claim with the proper governmental entity. Petitioners contended that the filing of the claim with the County of Los Angeles was ineffective as against LAUSD, PCHS and Mr. Cummings. In support of this claim, Petitioners presented undisputed evidence that Respondent failed to file a claim with LAUSD and PCHS and, in addition, failed to substantially comply with the governmental claims procedure.

The hearing on the motion for summary judgment occurred on June 28, 2005. At the conclusion of the hearing, the trial court took the matter under submission and, on July 11, 2005, issued a ruling granting Petitioners' motion as to all defendants. In its ruling, the court specified that Respondent failed "to raise a triable issue of material fact as to whether she properly filed a claim in accordance with Government Code § 945.4" and ruled:

- No claim was filed with LAUSD, but rather the County of Los Angeles, the wrong entity;

- PCHS was not required to register its information on the Roster of Public Agencies because it is not a "school district" under section 53051; and

- Respondent's correspondence with the principal of PCHS did not substantially fulfill all of the requirements of Government Code § 945.4.

The California Court of Appeal, in its initial opinion, agreed with the trial court and affirmed the trial court's ruling. The initial opinion stated that PCHS was a "public high school" and held that Respondent failed to prove actual and substantial compliance with the claim presentation requirements of the Tort Claims Act because Respondent failed to file her government claim with LAUSD or PCHS. (App. 16a, 25a-26a.) The Court of Appeal also based its initial opinion upon the California Charter School Act ("CSA") and California case law (i.e., *Wilson v. State Board of Education*, (1999) 75 Cal.App.4th 1125) in holding that the CSA assigned control over PCHS to LAUSD and that "charter school officials are officers of public schools to the same extent as members of other boards of education of school districts." (App. 29a.)

After Respondent filed a request for rehearing, the *Wells v. One2One*, (2006) 39 Cal.4th 1164 decision was published by the California Supreme Court. Thereafter, the Court of Appeal published an Opinion After Rehearing Order which reversed its initial opinion and, accordingly, reversed the trial court's ruling in this case. Although the Court of Appeal continued to label PCHS as a "public school" (App. 2a.), the Court of Appeal held that PCHS, a charter school operated as a nonprofit public benefit corporation, was not a public entity entitled to protection under the Tort Claims Act. As a result, Respondent was not required to file a claim with PCHS prior to filing her superior court complaint. The California Supreme Court denied Petitioners' Petition for Review.

B. Procedural History

The Court of Appeal issued its initial published opinion on July 24, 2006. Respondent filed a Petition for Rehearing with the Court of Appeal on August 8, 2006. The Court of Appeal granted the petition and issued its final published opinion on January 10, 2007. Petitioners filed a Petition for Rehearing with the Court of Appeal on January 24, 2007. On January 30, 2007, the Court of Appeal issued an order modifying opinion and denying the petition for rehearing. Respondent then filed a Petition for Rehearing with the Court of Appeals on February 2, 2007. On February 5, 2007, the Court of Appeal issued an order modifying opinion and denying the petition for rehearing.

Petitioners filed a Petition for Review with the California Supreme Court on February 15, 2007. In their Petition for Review, Petitioners attacked the Court of Appeal's decision on several fronts.

First, Petitioners argued that employees of charter schools like PCHS that are operated as a nonprofit public benefit corporation are no longer afforded equal protection of the law because they are no longer entitled to the defense protections afforded under California *Government Code* § 995. These individuals will now be required to defend themselves against claims for negligence, defamation, misrepresentation and punitive damages – claims that fall under the protection of section 995.

Similarly, Petitioners argued that the Court of Appeal's decision is in conflict with California *Government Code* § 950.2 which afforded teachers of public schools immunity from civil actions equal to that granted to public employees.

Now, because charter schools like PCHS are no longer public entities under the Tort Claims Act, teachers affiliated with such charter schools will no longer be public employees. As a result, these individuals will no longer be entitled to immunity under section 950.2. Further, because the Court of Appeal's decision nullifies the protection afforded under *Government Code* § 818, charter schools like PCHS and their employees will now be exposed to claims for punitive damages.

Petitioners also argued that the Court of Appeal steered the CSA into a collision course with the Establishment Clause. Under *Education Code* § 47605, all charter schools must be nonsectarian in their programs. However, now that charter schools – like PCHS – operated as nonprofit public benefit corporations are no longer public entities for purposes of the TCA, there is nothing preventing such charter schools from including religious courses in their curricula, or from requiring students to participate in school prayer. The California Supreme Court denied Petitioners' Petition for Review en banc.

REASONS FOR GRANTING THE PETITION

The petition should be granted for several reasons. The protections previously afforded PCHS and Mr. Cummings by California Tort Claims Act (i.e., claim presentment, immunity and protections against claims for punitive damages), and all similarly situated charter schools and teachers, are no longer available. Mr. Cummings, although a teacher for a California charter school that is defined by the California legislature as a part of the public school system, will now be exposed to negligence claims based upon his new status as a non-public employee. Yet, all other teachers

including those employed by charter schools that are not operated by or as a nonprofit public benefit corporation continue to benefit from the protections of the California Tort Claims Act. Accordingly, PCHS, Mr. Cummings and all similarly situated California charter schools and charter school employees will no longer be afforded protection equal to their public school counterparts.

In addition, the strict claims presentations requirements under the Tort Claims Act are no longer applicable to PCHS, Mr. Cummings and all similarly situated charter schools and employees. Under the Tort Claims Act, a prospective plaintiff – before filing a suit for damages – must submit a timely written claim to the appropriate public entity within strict time limits set by the Act. This notification allows the public entity an opportunity to determine the claim's sufficiency and timeliness. (*Government Code* §§ 910.8, 911.) The claims presentation requirement also provides the public entity with sufficient information to enable them to adequately investigate claims and to settle them if appropriate, allows the public entity to investigate the claim while witnesses and evidence are still available, provides public entities with information as to future liability at a time when they may budget for such expenditures and encourages public entities to correct the conditions or practices giving rise to claims. (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699; *McMartin v. County of Los Angeles* (1988) 202 Cal.App.3d 848.) Now, PCHS, even though it remains a public school in the eyes of the legislature, will no longer rely upon the protections afforded by the claims presentment requirement.

Petitioners request that this Court grant this Writ to protect PCHS, Mr. Cummings and all similarly situated public charter schools and teachers within the State of California.

THE DECISION BELOW IMPERMISSIBLY DENIES ALL NONPROFIT PUBLIC BENEFIT CHARTER SCHOOLS IN THE STATE OF CALIFORNIA AND THEIR EMPLOYEES EQUAL PROTECTION OF THE LAW

In *Shelley v. Kraemer* (1948) 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161, this Court held a state court order enforcing private restrictive covenants was a state judicial action that was a denial of equal protection. The Court held that a State acts, within the scope of the Fourteenth Amendment, not only where its judicial officers deny procedural due process or equal protection but where in enforcing a common law rule they deny substantive rights guaranteed by the Amendment. (*Shelley, supra*, 68 S.Ct. at 842, 92 L.Ed. at 1176.) The Court stated: "The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing." (*Shelley, supra*, 68 S.Ct. at 845, 92 L.Ed. at 1183.)

Our case is unique in that the State of California has already determined that the California Tort Claims Act is constitutional. (*Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 481.) In addition, the State of California has already determined that all charter schools, even those like PCHS that are operated as a nonprofit public benefit corporation, are public schools and are entitled to protection under the Tort Claims Act. (*Wilson v. Board of Education* (1999) 75 Cal.App.4th 1125.)

However, by plucking the protections of the California Tort Claims Act ("TCA") from charter schools like PCHS and ignoring the precedent set in *Wilson, supra*, the State of California through its judicial branch (the "State") has denied PCHS and PCHS' employees equal protection of the laws and places these entities and individuals in a defenseless position – they are no longer entitled to the defense protections afforded under California *Government Code* § 995. The State's action is, therefore, arbitrary.

In addition, even if this Court examines the issue presented by this Petition for Writ of Certiorari under a rational relationship test, the classification set forth by the California Supreme Court actually interferes with a legitimate governmental objective. (*Kadrmas v. Dickenson Public School* (1988) 487 U.S. 450, 457-458, 108 S.Ct. 2481, 101 L.Ed.2d 399.) As stated above, the California Legislature has already determined that charter schools such as PCHS are public schools and, as a result, are entitled to the protections under the Tort Claims Act. In addition, the Tort Claims Act, which advances a legitimate governmental objective to provide public entities with sufficient information to enable them to adequately investigate claims and to settle them if appropriate, is constitutional. (*Stanley v. City and County of San Francisco* (1975) 48 Cal.App.3d 575.) The decision of the State in this matter, however, interferes with this legitimate governmental interest by removing the protections of the Tort Claims Act from public charter schools like PCHS. Accordingly, the State's action is arbitrary and not rationally related to the existing legitimate governmental interest.

California *Government Code* § 995 states, in pertinent part:

> [U]pon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity. (Gov. Code § 995.)

The purpose of this statutory provision is to encourage public employees to carry out their duties secure in the belief that if they are sued for doing so, their employer will provide a defense. (*Embury v. King* (ND CA 2001) 191 F.Supp.2d 1071.) This protection flows to defamation actions against public school employees. (See, *Wright v. Compton Unified School District* (1975) 46 Cal.App.3d 177, 181-182 (school district, a public entity, was under a duty imposed by section 995 to provide for the defense of its employees in the defamation action brought against them).)

Here, by holding that PCHS is not a "public entity" for purposes of the TCA, the State stripped PCHS' employees of any protection under section 995. Petitioner Cummings, as well as other similarly situated charter school employees, will be required to defend themselves against all claims, including claims for negligence, defamation, misrepresentation and punitive damages – claims that fall under the protection of section 995. Yet, *all other public schools and public school employees*, including employees of charter schools that are not operated as or by nonprofit public benefit corporations, will be protected by section 995. As stated above, this classification does not further – and, in

fact, hinders – the State's objective of protecting public schools and their employees. (*Kadrmas, supra*, 487 U.S. 450, 457-458.) Even though Petitioner Cummings is employed by a charter school that continues to be considered a part of the California public school system, he is no longer entitled to the same protection afforded all other public school employees.

Another consequence of the State's decision is that employees of PCHS and other similarly situated charter schools will no longer be guarded by the immunity provisions of *Government Code* § 950.2 and *Civil Code* § 47 (dealing with official proceedings). The TCA specifically bars any action against a public employee acting within the scope of his or her employment as a public employee. (Gov. Code § 950.2.) Section 950.2 states:

> Except as provided in Section 950.4, a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred under Part 3 (commencing with Section 900) of this division or under Chapter 2 (commencing with Section 945) of Part 4 of this division. This section is applicable even though the public entity is immune from liability for the injury.

Under Section 950.2, a charter school teacher, such as Petitioner Cummings, was afforded protection equal to that afforded to a public employee. Under the State's action, however, charter school teachers will be characterized as "non-governmental" employees because the entities

employing them are not public entities for purposes of the TCA. As a result, any immunity previously granted to charter school teachers under section 950.2 has been revoked by the State's action.

This poses a significant problem for charter schools. Prospective teachers may decide to teach at the school districts rather than the charter schools because, as an employee of a school district, the prospective employee will be protected by the TCA. Under the State's action, the prospective employee will not have that luxury if he or she decides to accept employment with a charter school like PCHS.

The State's action also effectively wipes out the protections of *Government Code* § 818 which specifically stated that public entities are not liable for punitive damages. (Gov. Code § 818.) Now, because PCHS is no longer a public entity, PCHS and its employees will be subject to claims of punitive damages even though other public schools and their employees continue to enjoy the benefits and protections afforded by the TCA.

The State's action also prevents charter school teachers from participating in the State Teachers' Retirement System ("STRS") and the Public Employees' Retirement System ("PERS"). (Ed. Code §§ 47605, 47611, 47611.3.)

A charter school is entitled to provide its staff with information regarding benefits and compensation to be paid to the employees, including information pertaining to STRS and PERS. (Ed. Code § 22458.) In fact, the governing board of the school district may deny a charter school's petition if the board finds that the petition does not contain reasonably

comprehensive descriptions of "[t]he manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security." (Ed. Code § 47605(b)(5)(K).) In our case, however, the State's action prevents any teacher employed by a charter school like PCHS that is operated as a nonprofit public benefit corporation from participating in California's retirement programs.

The State's action is also in conflict with *Education Code* § 22131. Under section 22131, a charter school is a public entity. A charter school, such as PCHS, that makes STRS and PERS available to its staff is an employer under *Education Code* § 22131 and is by operation of law a governmental entity. Under section 22131, an "employer" is defined as "the state or any agency or political subdivision thereof for which creditable service subject to coverage by the plan is performed." (Ed. Code § 22131.) A "creditable service" is defined as:

> [A]ny of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment:
>
> (1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional

> occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161. (Ed. Code § 22119.5.)

Here, because defendant Cummings performed credible services for PCHS, sections 22131 and 22119.5 establish that PCHS is a public employer, is a governmental entity by operation of law and is entitled to protection under the Tort Claims Act. Accordingly, the State's action may not generally characterize charter schools like PCHS as non-governmental entities. Further, defendant Cummings, who performs credible service for PCHS, is not only an employee of a governmental entity (i.e., a charter school) but is also an employee of the state or subdivision of the state. Thus, a charter school must not be considered a non-public entity.

Finally, the State's action poses a significant question – if PCHS and all similarly situated public charter schools are not public entities for purposes of the TCA, are these entities public entities for all other purposes? If not, then PCHS, as well as *all charter schools in the state of California* operated as or by a nonprofit public benefit corporation, will no longer be entitled to public funds. As a result, the State's action has unilaterally closed and locked the spigot from which public funds previously flowed to PCHS and similarly situated charter schools in California. PCHS will now be required to charge tuition in order to operate in violation of the CSA. The State's action placed PCHS in this difficult conundrum with only one unfortunate solution – close its doors, lay-off its teachers and send its students and employees searching for another school.[1]

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1. A potential consequence of the State's action is that the decision has steered the Charter School Act into a collision course (Cont'd)

The organizational structure and actual existence of these particular charter schools, as well as the status of all teachers employed by these charter schools, are clearly in jeopardy as a result of the State's action. By labeling PCHS and all similar charter schools as non-public entities, some, if not all, of these charter schools will cease to exist because of a lack of funding. The State's action is wrong and must be reversed to ensure the existence of and benefits afforded by PCHS and all other similarly situated charter schools in California.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari. The Court may also wish to consider summary reversal.

Respectfully submitted,

JOHN S. LEVITT
PHILIP J. BONOLI*
ROBERT LANE MORRIS
SOLTMAN, LEVITT & FLAHERTY
2535 Townsgate Road
Suite 307
Westlake Village, CA 91361
(805) 497-7706

** Counsel of Record* *Attorneys for Petitioners*

(Cont'd)
with doctrine of separation of church and state. The California Legislature has already determined that charter schools must be nonsectarian in their programs. *Education Code* § 47605. However, now that public charter schools like PCHS may no longer receive public funds, there is nothing preventing such schools from including religious courses in their curricula, or from requiring students to participate in school prayer.

APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SEVEN FILED JANUARY 20, 2007 (MODIFIED JANUARY 30, 2007 AND FEBRUARY 5, 2007)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION SEVEN

No. B185996

COURTNEY KNAPP, a Minor, etc., et al.,

Plaintiffs and Appellants,

v.

PALISADES CHARTER HIGH SCHOOL et al.,

Defendants and Respondents.

In this sexual harassment action, a visiting student appeals the trial court's grant of summary judgment in favor of an incorporated charter high school, its teacher and the chartering school district on the ground that she failed to comply with and was not excused from meeting the claim presentation requirements of the Government Tort Claims Act (Gov.Code,[1] § 900 et seq.) (the TCA). Following

1. All further statutory references are to the Government Code unless otherwise indicated.

Appendix A

Wells v. One2One Learning Foundation (2006) 39 Cal.4th 1164, 48 Cal.Rptr.3d 108, 141 P.3d 225 (*Wells*), we conclude that, as an alleged nonprofit public benefit corporation, the charter school is not a "public entity" under the TCA. It is further not required to file identifying information on the Roster of Public Agencies under section 53051. Thus, claims against the incorporated charter need not satisfy the TCA. Accordingly, we reverse and remand with instructions.

FACTUAL AND PROCEDURAL BACKGROUND

I. FACTS

The following facts are undisputed. Plaintiff and appellant Courtney Knapp lives with her parents in Pacific Palisades. Defendant and respondent Palisades Charter High School (PCHS), a California corporation[2] whose charter was granted by defendant and respondent Los Angeles Unified School District (LAUSD), is the public high school that serves the area. In February 2004, then 13-year-old Knapp was in the eighth grade at Calvary Christian School (Calvary), a private school. Knapp's parents planned to send her to PCHS for high school upon graduation from Calvary.

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2. In the record, the declaration of Jack Sutton, PCHS Executive Director, set forth that "PCHS was incorporated in the State of California on February 4, 2004" and was a "separate legal entity" from LAUSD, but provided no information on the type of corporation formed. No articles of incorporation or bylaws were included in the record on appeal. When questioned by this court during oral argument, defendants' counsel was unable to identify the type of corporation formed by PCHS. Plaintiff, however, has made no objection to the characterization of PCHS as a corporate entity.

Appendix A

On February 6, 2004, PCHS sponsored a "Shadow Day," which provided prospective students the opportunity to attend two classes with a PCHS student. Knapp shadowed PCHS student Kaylie McAllister, her friend and neighbor. They attended an advanced placement European history class taught by defendant and respondent Ronald Cummings, who allegedly made and/or allowed other students to make sexual statements or innuendos toward Knapp.

Specifically, upon learning that Knapp attended Calvary, Cumming made the sign of the cross and said, "May God bless you." He then asked Knapp to make his tea. During class, Cumming allegedly slapped, hugged and kissed two male students. In the middle of his lecture, Cummings brought up the topic of Janet Jackson exposing her breast on the 2004 Super Bowl half-time show, whereupon a student commented that Knapp probably did not know the meaning of the word "boob." A student was surprised to learn that Knapp was in the eighth grade, exclaiming that she was "huge." The remark drew laughter from the class in light of the Janet Jackson discussion. When the embarrassed student explained that he meant Knapp was tall, Cummings looked at Knapp's breasts and commented that she had a "nice pair of knockers." Later, the word "boob" was again injected into the class discussion. Another student remarked, "Maybe we should show the 8th grader what they look like." For the rest of the class period, Cummings interspersed his lecture with profanity and discussed the "shuttlecock" loom, which he called the "cock."

The experience in Cummings's class made Knapp feel embarrassed, humiliated, exposed, and afraid that Cummings and his students would single her out again for sexual banter.

Fearful of running into Cummings again and of being teased by students from the class, she stopped attending athletic events to support her friends at PCHS. Knapp ultimately decided against going to PCHS for high school. Instead, she elected to enroll at the private Oaks Christian High School in Westlake Village, a 50-minute one-way bus ride from Pacific Palisades.

II. PROCEDURE

A. The Demand

On the night of Shadow Day, Knapp's father, Thomas Knapp, M.D., directed an e-mail to PCHS's then Principal and Executive Director Linda Hosford about Cummings's conduct with his daughter, and demanded a call within one business day and a meeting within two business days. However, the e-mail he sent to Hosford was apparently directed to the wrong address. Knapp then forwarded Hosford a written account of the events. McAllister and her mother also complained orally and in writing to Hosford and the PCHS Board of Directors about Cummings. Hosford declined to meet with the Knapps until she completed an investigation of the incident. Hosford enlisted the help of Assistant Principal Ann Davenport with the investigation,[3] and advised her that the school was "being sued."

3. On May 5, 2004, Hosford completed her investigation and placed a written warning/reprimand in Cummings's personnel file. The next day, Hosford informed the Knapps in writing that PCHS had completed its investigation, that while any personnel action taken was confidential, the school policy prohibited inappropriate conduct by employees and retaliation against whistle blowers. On January 28, 2005, the California Commission on Teacher Credentialing informed the Knapps that it had reviewed their affidavit and had recommended a public reproval of Cummings.

Appendix A

On February 9, 2004, Knapp retained counsel and demanded that PCHS either terminate Cummings or pay for four years of Knapp's private education. In a letter dated February 17 by its counsel, PCHS declined to negotiate with Knapp on her demands and gave the following notice: "Should you wish to file a claim for such alleged damages with the School, you will need to first file a claim which meets the requirements of the Government Tort Claims Act under California law."

B. The Claim for Damages

On March 3, 2004, Knapp filed a claim for damages with the County of Los Angeles. The claim demanded that LAUSD pay $125,000 for four years of private high school education for her. The enumerated claims included: violation of the Unruh Civil Rights Act (Civ.Code, §§ 51, 51.5 and 52, subd. (a)); violation of Title IX of the 1972 Education Amendments (20 U.S.C. § 1681) (Title IX); violation of 42 U.S.C. § 1983; emotional distress; and negligent failure to train, supervise and discipline Cummings.

On March 12, the County of Los Angeles rejected Knapp's claim on the ground that it did not involve the County, its officers, agents or employees. The letter additionally stated: "STATE LAW REQUIRES THAT YOU BE GIVEN THE FOLLOWING 'WARNING': [¶] Subject to certain exceptions, you have only [six] (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code section 945.6. [¶] This time limitation applies only to causes of action for which Government Code Sections 900-

915.4 required you to present a claim. Other causes of action, including those arising under federal law, may have different time limitations. [¶] You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

Knapp never filed a claim for damages with PCHS or LAUSD. On January 11, 2005, the Los Angeles County Registrar-Recorder/County Clerk issued a Certificate of Fact of Non-Filing, which verified that the Public Agency Roster had no record of a filing by PCHS during the relevant period.

C. The Lawsuit and Summary Judgment

On June 11, 2004, Knapp, by and through her father as guardian ad litem, sued PCHS, LAUSD and Cummings (collectively defendants) for sexual harassment under the Unruh Civil Rights Act (Civ.Code, § 51.9), and intentional and negligent infliction of emotional distress.

The defendants moved for summary judgment or, in the alternative, summary adjudication on the grounds that Knapp failed to properly present claims under the TCA and sustained no damages. Following argument, the court granted the motion on the ground that Knapp failed to raise a triable issue of material fact as to whether she properly filed a claim in accordance with section 945.4. The court explained that "[n]o claim was ever filed with the LAUSD, but rather with the County of Los Angeles, the wrong entity." It held that Knapp's correspondence with Hosford did not substantially fulfill the requirements of the TCA, because Knapp "never clearly indicated that legal action was a certainty." Further,

because "PCHS is not a school district for purposes of the Government Claims [Act]," it was "not required to register its information on the Roster of Public Agencies," and Knapp "was not excused in serving the proper public entity."[4]

DISCUSSION

I. STANDARD OF REVIEW

The Supreme Court established the standard of review for an order granting summary judgment. "A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has 'shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff 'may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action. . . .' [Citations.]" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477, 110 Cal.Rptr.2d 370, 28 P.3d 116; see also *Aguilar v. Atlantic*

4. This appeal relates solely to the claims against PCHS and Cummings; the parties do not address, and we do not reach, issues pertaining to any other party. Reversal of the judgment is only as to PCHS and Cummings.

Richfield Co. (2001) 25 Cal.4th 826, 854-855, 107 Cal.Rptr.2d 841, 24 P.3d 493; *Katz v. Chevron Corp.* (1994) 22 Cal.App.4th 1352, 1363-1364, 27 Cal.Rptr.2d 681.)

II. THE CHARTER SCHOOLS ACT

The Charter Schools Act of 1992 (Ed.Code, § 47600 et seq.) (CSA) provides for the establishment and operation of charter schools that operate independently of existing school districts, county boards of education or the State Board of Education. (§§ 47605, 47605.5, 47605.6 and 47605.8.) In enacting the CSA, the Legislature intended to allow "teachers, parents, pupils, and community members to establish ... schools that operate independently from the existing school district structure." (Ed.Code, § 47601.)

The charter establishing a charter school is a contract detailing the school's educational programs, goals, students served, measurable pupil outcomes and measurement methods, and the school's governance structure. (Ed.Code, § 47605, subd. (b)(5).) Charters are granted for a specific term, typically not in excess of five years. At the end of the term, the entity granting the charter may renew the school's contract. (ed.code, § 47607.) "[C]harter school officials are officers of public schools to the same extent as members of other boards of education of public school districts. So long as they administer charter schools according to the law and their charters, as they are presumed to do, they stand on the same constitutional footing as noncharter school board members. If they violate the law, the charter will be revoked." (*Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1141, 89 Cal.Rptr.2d 745.)

Appendix A

A charter school is eligible for its share of state and local public education funds. (Ed.Code, § 47630 et seq.) It must comply with the CSA, specified statutes, and the terms of its charter, but is otherwise exempt from the laws governing school districts. (Ed.Code, § 47610.)

Legislation afforded charter schools varying degrees of autonomy. Initially, charter schools were viewed as operationally but not legally separate from their chartering authorities. (See 80 Ops.Cal.Atty.Gen. 52, 55-56 (1997); 81 Op.Cal.Atty.Gen. 140, 144 (1998).) Effective 1999, Education Code section 47604 provided that charter schools may also elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law.[5] (Cal. Ed.Code, § 47604, subd. (a); added by Stats.1998, ch. 34, § 3.) In 2000, the Legislature added the provision

5. Public benefit corporations are formed for a public or charitable purpose. They are not operated for the mutual benefit of their members but for some broader good. Articles of incorporation containing specified information must be filed in order to form a public benefit corporation. (Corp.Code, §§ 5120-5122.) "For all purposes other than an action in the nature of quo warranto, a copy of the articles of a corporation duly certified by the Secretary of State is conclusive evidence of the formation of the corporation and prima facie evidence of its corporate existence." (Corp.Code, § 5133.) In addition, the bylaws "shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation" and "may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, . . ." (Corp.Code, § 5151, subds. (a), (c).)

that a charter school, including one operated by a nonprofit public benefit corporation, may be considered a "public agency," as defined in section 6500, for the purpose of being eligible for membership in a joint powers agreement for risk-pooling. (§ 6528.) Irrespective of their form, "the requisite constitutional control over charter schools [ ] are in place whether a school elects to 'operate as, or be operated by, a nonprofit public benefit corporation' . . . , or whether it remains strictly under the legal umbrella of the chartering authority." (*Wilson v. State Bd. of Education*, *supra*, 75 Cal.App.4th at p. 1140, 89 Cal.Rptr.2d 745.)

III. UNDER WELLS, CLAIMS AGAINST AN INCORPORATED CHARTER SCHOOL NEED NOT SATISFY THE TCA

Our threshold question is whether PCHS is a "public entity" subject to the TCA.[6] During the pendency of this appeal, the Supreme Court decided *Wells*, providing significant guidance on this issue.

In *Wells*, a Texas corporation, through a California public benefit corporation, operated a distance learning program in

6. Subject to certain exceptions not implicated here, the TCA provides that "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board. . . ." (§ 945.4.) "Submission of a claim to a public entity pursuant to [the Act] is a condition precedent to a [civil] action and the failure to present the claim bars the action. [Citation.]" (*Paramount Unified School Dist. v. Teachers Assn. of Paramount* (1994) 26 Cal.App.4th 1371, 1387, 32 Cal.Rptr.2d 311.)

several California charter schools chartered by different school districts. (*Wells, supra*, 39 Cal.4th at p. 1180, 48 Cal.Rptr.3d 108, 141 P.3d 225.) A group of students and their parents or guardians sued the charter schools, their corporate operators, and the chartering school districts, alleging that the schools failed to deliver promised instructional services, equipment, and supplies. (*Ibid.*) Their claims included violation of the California False Claims Act (§ 12650 et seq.) (CFCA) and the unfair competition law (Bus. & Prof.Code, § 17200 et seq.) (UCL). (*Id.* at pp. 1178-1179, 48 Cal.Rptr.3d 108, 141 P.3d 225.) There, as here, the plaintiffs did not comply with the claim presentation requirement of the TCA. (*Id.* at p. 1213, 48 Cal.Rptr.3d 108, 141 P.3d 225.) The Supreme Court addressed whether and in what circumstances the charter schools and/or their operators could be exposed to civil liability based on these allegations. (*Id.* at p. 1178, 48 Cal.Rptr.3d 108, 141 P.3d 225.) It also considered whether the CFCA cause of action against the charter school defendants required prior presentment of a claim under the TCA. (*Id.* at p. 1213, 48 Cal.Rptr.3d 108, 141 P.3d 225.)

Focusing on the corporate structure of these charter schools, the Court reasoned that the charter schools in question were "*operated*, not by the public school system but by distinct outside entities—including nonprofit public benefit corporations with independent legal identities (see Ed.Code, § 47604, subd. (a); Corp.Code, §§ 5000 et seq., 5110 et seq.)—that are given substantial freedom to achieve academic results free of interference by the public educational bureaucracy. The sole relationship between the charter school operator and the chartering district is through the charter governing the schools' operation." (*Wells, supra*,

39 Cal.4th at p. 1201, 48 Cal.Rptr.3d 108, 141 P.3d 225.) The court further observed that these charter school operators exercise considerable autonomy and independent responsibility as to financial matters, such that the chartering authority is not liable for their debts and obligations. (*Ibid.*; see Ed.Code, § 47604, subd. (c).) It noted that the CSA's 2003 amendment extended immunity to chartering authorities for " 'claims arising from the performance of acts, errors, or omissions by the .. . school, if the authority has complied with all oversight responsibilities required by law.' (Ed.Code, § 47604, subd. (c) [.])" (*Wells*, *supra*, at p. 1201, 48 Cal.Rptr.3d 108, 141 P.3d 225.) "Though, by statutory mandate, these institutions are an alternative form of public schools financed by public education funds, they and their nongovernmental operators are largely free and independent of management and oversight by the public education bureaucracy." (*Id.* at p. 1203, 48 Cal.Rptr.3d 108, 141 P.3d 225.) The Court determined the charter schools did not qualify as "public entities" under the CFCA. (*Id.* at p. 1203, 48 Cal.Rptr.3d 108, 141 P.3d 225.) Because they competed with the traditional schools for students and funding, neither did the Court find them to be "governmental entities" exempt from the UCL's restrictions on their competitive practices. (*Id.* at p. 1204, 48 Cal.Rptr.3d 108, 141 P.3d 225.)

Further, even though charter schools are deemed to be school districts under the CSA, the Court in *Wells* found "those purposes do not expressly include coverage by the TCA. . . ." (*Wells*, *supra*, 39 Cal.4th at p. 1214, 48 Cal.Rptr.3d 108, 141 P.3d 225.) In connection with the CFCA, the Court noted that the charter school defendants did not "fit comfortably within any of the categories defined,

for purposes of the TCA, as 'local public entities.' " (*Id.* at p. 1214, 48 Cal.Rptr.3d 108, 141 P.3d 225.) And, even if the charter school defendants were viewed as " 'local public entities' for purposes of the TCA, plaintiffs were not required under that statute to present written claims before filing their qui tam complaint pursuant to the CFCA." (*Id.* at p. 1216, 48 Cal.Rptr.3d 108, 141 P.3d 225.)

Here, PCHS was granted its initial charter on June 30, 2000 by LAUSD. According to the record and counsel's statement at oral argument, the charter has been subsequently amended and renewed. On February 4, 2004, two days before the alleged incident occurred, PCHS allegedly incorporated as a California corporation. Like the charter schools in *Wells*, PCHS is deemed a separate school district under section 47612, subdivision (c), and an independent legal entity from its chartering authority. It has its own board of directors and budget, hires its own administrators and teachers, and has identified its own authorized agent for service of process. It is likewise given substantial freedom to achieve academic results free of interference by the LAUSD, whose chartering authority comprises the sole relationship with PCHS. The charter provides that PCHS must carry its own insurance and bond. PCHS must further indemnify and hold the LAUSD harmless from claims arising from the charter school, its acts or omissions and those of its officers or employees. PCHS must also engage its own independent public accountant and be responsible for its own financial services. In addition, it must reimburse LAUSD for any services rendered upon request.

Accordingly, assuming PCHS can demonstrate that it is a nonprofit corporation independent from the LAUSD, we follow *Wells* and conclude that Knapp was not required to present written claims to the charter school under the TCA before filing her sexual harassment and tort claims.

IV. PCHS IS NOT REQUIRED TO FILE ITS IDENTIFYING INFORMATION ON THE ROSTER OF PUBLIC AGENCIES

For purposes of the Roster of Public Agencies, "public agency" "means a district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the state or a county, city and county, or city." (§ 53050.) Consistent with our holding above, if it is a nonprofit public benefit corporation, we find that PCHS is not a "public agency" within the meaning of section 53050 separately required to register with the Secretary of State and the county clerk for the Roster of Public Agencies.

DISPOSITION

The judgment is reversed and remanded without prejudice to renewal of the motion for summary judgment should any party demonstrate that PCHS is not a nonprofit public benefit corporation. Knapp shall recover her costs on appeal.

PERLUSS, P.J. and WOODS, J., concur.

APPENDIX B — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SEVEN FILED JULY 24, 2006

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION SEVEN

No. B185996

COURTNEY KNAPP, a Minor, etc.,

Plaintiff and Appellant,

v.

PALISADES CHARTER HIGH SCHOOL et al.,

Defendants and Respondents.

A visiting student appeals the trial court's grant of summary judgment in favor of a charter high school, its teacher and the school district on the ground that she failed to comply with and was not excused from meeting the claim presentation requirements of the Government Claims Act (Gov.Code,[1] § 900 et seq.)[2] The student's contentions are

1. All further statutory references are to the Government Code unless otherwise indicated.

2. The Government Claims Act is also known as the Torts Claim Act. "[T]he label Tort Claims Act is a misnomer, at least with respect to the claims presentation statutes. Part 3 of division 3.6, section 900 et seq., is more accurately described as a government claims act." (*Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 304, 85 Cal.Rptr.2d 74.)

twofold: 1) she substantially complied with the Government Claims Act; and 2) she was excused from filing the claim, because the charter high school failed to file identifying information for listing on the Roster of Public Agencies pursuant to section 53051. Finding no triable issue of material fact, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. FACTS

The following facts are undisputed. Plaintiff and appellant Courtney Knapp lives with her parents in Pacific Palisades. Defendant and respondent Palisades Charter High School (PCHS), a California corporation[3] whose charter was granted by defendant and respondent Los Angeles Unified School District (LAUSD), is the public high school that serves the area. In February 2004, then 13-year-old Knapp was in the eighth grade at Calvary Christian School (Calvary), a private school. Knapp's parents planned to send her to PCHS for high school upon graduation from Calvary.

On February 6, 2004, PCHS sponsored a "Shadow Day," which provided prospective students the opportunity to attend

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3. In the record, the declaration of Jack Sutton, PCHS Executive Director, set forth that "PCHS was incorporated in the State of California on February 4, 2004" and was a "separate legal entity" from LAUSD, but provided no information on the type of corporation formed. No articles of incorporation or bylaws were included in the record on appeal. When questioned by this court during oral argument, defendants' counsel was unable to identify the type of corporation formed by PCHS.

two classes with a PCHS student. Knapp shadowed PCHS student Kaylie McAllister, her friend and neighbor. They attended an advanced placement European history class taught by defendant and respondent Ronald Cummings, who allegedly made and/or allowed other students to make sexual statements or innuendos toward Knapp.

Specifically, upon learning that Knapp attended Calvary, Cumming made the sign of the cross and said, "May God bless you." He then asked Knapp to make his tea. During class, Cumming allegedly slapped, hugged and kissed two male students. In the middle of his lecture, Cummings brought up the topic of Janet Jackson exposing her breast on the 2004 Super Bowl half-time show, whereupon a student commented that Knapp probably did not know the meaning of the word "boob." A student was surprised to learn that Knapp was in the eighth grade, exclaiming that she was "huge." The remark drew laughter from the class in light of the Janet Jackson discussion. When the embarrassed student explained that he meant Knapp was tall, Cummings looked at Knapp's breasts and commented that she had a "nice pair of knockers." Later, the word "boob" was again injected into the class discussion. Another student remarked, "Maybe we should show the 8th grader what they look like." For the rest of the class period, Cummings interspersed his lecture with profanity and discussed the "shuttlecock" loom, which he called the "cock."

The experience in Cummings's class made Knapp feel embarrassed, humiliated, exposed, and afraid that Cummings and his students would single her out again for sexual banter. Fearful of running into Cummings again and of being teased

by students from the class, she stopped attending athletic events to support her friends at PCHS. Knapp ultimately decided against going to PCHS for high school. Instead, she elected to enroll at the private Oaks Christian High School in Westlake Village, a 50-minute one-way bus ride from Pacific Palisades.

II. PROCEDURE

A. The Demand

On the night of Shadow Day, Knapp's father, Thomas Knapp, M.D., directed an e-mail to PCHS's then Principal and Executive Director Linda Hosford about Cummings's conduct with his daughter, and demanded a call within one business day and a meeting within two business days. However, the e-mail he sent to Hosford was apparently directed to the wrong address. Knapp then forwarded Hosford a written account of the events. McAllister and her mother also complained orally and in writing to Hosford and the PCHS Board of Directors about Cummings. Hosford declined to meet with the Knapps until she completed an investigation of the incident. Hosford enlisted the help of Assistant Principal Ann Davenport with the investigation,[4] and advised her that the school was "being sued."

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4. On May 5, 2004, Hosford completed her investigation and placed a written warning/reprimand in Cummings's personnel file. The next day, Hosford informed the Knapps in writing that PCHS had completed its investigation, that while any personnel action taken was confidential, the school policy prohibited inappropriate conduct by employees and retaliation against whistle blowers. On January 28, 2005, the California Commission on Teacher Credentialing informed the Knapps that it had reviewed their affidavit and had recommended a public reproval of Cummings.

Appendix B

On February 9, 2004, Knapp retained counsel and demanded that PCHS either terminate Cummings or pay for four years of Knapp's private education. In a letter dated February 17 by its counsel, PCHS declined to negotiate with Knapp on her demands and gave the following notice: "Should you wish to file a claim for such alleged damages with the School, you will need to first file a claim which meets the requirements of the Government Tort Claims Act under California law."

B. The Claim for Damages

On March 3, 2004, Knapp filed a claim for damages with the County of Los Angeles. The claim demanded that LAUSD pay $125,000 for four years of private high school education for her. The enumerated claims included: violation of the Unruh Civil Rights Act (Civ.Code, §§ 51, 51.5 and 52, subd. (a)); violation of Title IX of the 1972 Education Amendments (20 U.S.C. § 1681) (Title IX); violation of 42 U.S.C. § 1983; emotional distress; and negligent failure to train, supervise and discipline Cummings.

On March 12, the County of Los Angeles rejected Knapp's claim on the ground that it did not involve the County, its officers, agents or employees. The letter additionally stated: "STATE LAW REQUIRES THAT YOU BE GIVEN THE FOLLOWING 'WARNING': [¶] Subject to certain exceptions, you have only [six] (6) months from the date this notice was personally delivered or deposited in

the mail to file a court action on this claim. See Government Code section 945.6.[¶] This time limitation applies only to causes of action for which Government Code Sections 900-915.4 required you to present a claim. Other causes of action, including those arising under federal law, may have different time limitations. [¶] You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

Knapp never filed a claim for damages with PCHS or LAUSD. On January 11, 2005, the Los Angeles County Registrar-Recorder/County Clerk issued a Certificate of Fact of Non-Filing, which verified that the Public Agency Roster had no record of a filing by PCHS during the relevant period.

C. The Lawsuit and Summary Judgment

On June 11, 2004, Knapp, by and through her father as guardian ad litem, sued PCHS, LAUSD and Cummings (collectively defendants) for sexual harassment under the Unruh Civil Rights Act (Civ.Code, § 51.9), intentional and negligent infliction of emotional distress.

The defendants moved for summary judgment or, in the alternative, summary adjudication on the grounds that Knapp failed to properly present claims under the Government Claims Act and sustained no damages. Following argument, the court granted the motion on the ground that Knapp failed to raise a triable issue of material fact as to whether she properly filed a claim in accordance with section 945.4. The court explained that "[n]o claim was ever filed with the LAUSD, but rather with the County of Los Angeles, the

wrong entity." It held that Knapp's correspondence with Hosford did not substantially fulfill the requirements of the Government Claims Act, because Knapp "never clearly indicated that legal action was a certainty." Further, because "PCHS is not a school district for purposes of the Government Claims [Act]," it was "not required to register its information on the Roster of Public Agencies," and Knapp "was not excused in serving the proper public entity."

Knapp timely appealed from the summary judgment.

DISCUSSION

Knapp's several contentions[5] can be reduced to two

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5. In her Appellant's Opening Brief, Knapp set forth five arguments and seven sub-arguments that: I. The trial court violated Knapp's due process rights when it concluded that LAUSD, not PCHS, was the proper entity to serve with notice of a claim against PCHS; II. PCHS was the proper entity to serve with notice of a claim, and the trial court's conclusion that LAUSD was the proper entity was wrong as a matter of law; III. Knapp was excused from the claim-filing requirement, and the trial court erred as a matter of law in concluding she was not; A. The governing body of a public agency is required to file identifying information with the county clerk to be indexed in the "Roster of Public Agencies;" B. The requirement that a public agency file its identifying information is a prerequisite to it receiving a notice of a claim-its failure to file unconditionally excuses a claimant from filing a claim; C. It was undisputed PCHS failed to comply with the requirement to file its identifying information with the County Clerk; D. The requirement to file identifying information applies to PCHS because it is a "public agency" with its own "governing body"-not a subdivision of LAUSD; (Cont'd)

threshold questions: 1) whether she complied or substantially complied with the Government Claims Act; and 2) if not, whether she was excused from filing the claim, because PCHS had not filed identifying information for listing on the Roster of Public Agencies.

I. STANDARD OF REVIEW

The Supreme Court established the standard of review for an order granting summary judgment. "A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has 'shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff 'may not rely upon the mere allegations

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(Cont'd)

E. Reliance by Knapp on PCHS's failure to file its identifying information with the county clerk is not required; IV. Knapp's communications constituted substantial compliance or, alternatively, PCHS waived any defect, and the trial court erred in finding otherwise; A. Knapp substantially complied with the claim-filing requirement; B. Alternatively, Knapp's communications with PCHS were readily identifiable as a claim, and PCHS waived any defect; and V. Knapp presented undisputed evidence of damages confirming the existence of triable issues of material fact.

or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action. . . .' [Citations.]" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477, 110 Cal.Rptr.2d 370, 28 P.3d 116; see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855, 107 Cal.Rptr.2d 841, 24 P.3d 493; *Katz v. Chevron Corp.* (1994) 22 Cal.App.4th 1352, 1363-1364, 27 Cal.Rptr.2d 681.)

II. THE COURT PROPERLY FOUND THAT PLAINTIFF FAILED TO COMPLY WITH THE GOVERNMENT CLAIMS ACT

Subject to certain exceptions not implicated here, the Government Claims Act provides that "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefore has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board. . . ." (§ 945.4.) "Submission of a claim to a public entity pursuant to [the Act] is a condition precedent to a [civil] action and the failure to present the claim bars the action. [Citation.]" (*Paramount Unified School Dist. v. Teachers Assn. of Paramount* (1994) 26 Cal.App.4th 1371, 1387, 32 Cal.Rptr.2d 311.)

"A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following: [¶] (a) The name and post office address of the claimant. [¶] (b) The post office address to which the person presenting the claim desires notices to be sent. [¶] (c) The date, place and other circumstances of the occurrence or transaction

which gave rise to the claim asserted. [¶] (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim. [¶] (e) The name or names of the public employee or employees causing the injury, damage, or loss, if known. [¶] (f) The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case." (§ 910.)

Section 915 sets forth the procedures for presenting a claim: "(a) A claim . . . shall be presented to a local public entity by either of the following means: [¶] (1) Delivering it to the clerk, secretary or auditor thereof. [¶] (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office.[¶] . . . [¶] (d) A claim . . . shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity ... within the time prescribed for presentation thereof." "[T]he purpose of the claims statutes 'is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation. [Citations].' [Citations.]" (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 705, 263 Cal.Rptr. 119, 780 P.2d 349.)

" '[I]f the injured party fails to file a timely claim, a written application may be made to the public entity for leave to present such claim. (Gov.Code, § 911.4, subd. (a).) If the public entity denies the application, Government Code section 946.6 authorizes the injured party to petition the court for relief from the claim requirements.' [Citation.]" (*Spencer v. Merced County Office of Education* (1997) 59 Cal.App.4th 1429, 1435, 69 Cal.Rptr.2d 750.)

A. No Actual Compliance

It is undisputed that Knapp filed her government claim with the wrong public entity, the County of Los Angeles. When it rejected her claim on March 12, 2004, Knapp had actual notice that the County was not the appropriate entity.

Having been placed on notice by both the County and PCHS that the filing with the County was inadequate, Knapp failed to file a claim with either PCHS or LAUSD. In the record, PCHS Executive Director Jack Sutton, the authorized agent for service of process and receipt of all section 914 claims, declared that Knapp never filed a claim with PCHS prior to filing her June 11, 2004 lawsuit against the charter school. Similarly, Jefferson Crain, Executive Officer of the Board of Education for the LAUSD, also declared that Knapp never filed a claim with LAUSD prior to filing her complaint against the school district. Neither did Knapp apply to PCHS, LAUSD or the court for leave to present a late claim. (§ 911.4.) Knapp thus failed to prove actual compliance with the claim presentation requirements of the Government Claims Act.

Appendix B

B. No Substantial Compliance

"The claims statutes should not be used as traps for the unwary where their purpose has been satisfied, and to that end, courts employ a test of substantial compliance rather than strict compliance in evaluating whether a plaintiff has met the demands of the claims statutes." (*Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894, 899, 278 Cal.Rptr. 196.) "[T]o gauge the sufficiency of a particular claim, *two* tests shall be applied: Is there some compliance with *all* of the statutory requirements; and, if so, is this compliance sufficient to constitute *substantial* compliance?" (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456-457, 115 Cal.Rptr. 797, 525 P.2d 701.) "[S]ubstantial compliance under the statute demands that the misdirected claim be 'actually received' by the appropriate person or board. [Citation.] If a public employee has failed to fulfill a duty to forward a misdirected claim to the appropriate party, such claim cannot be in substantial compliance because it was not 'actually received' by the appropriate party." (*Life v. County of Los Angeles, supra*, at p. 901, 278 Cal.Rptr. 196; see § 915, subd. (d).)

Knapp's contentions that she substantially complied with the claim presentation requirements and that PCHS waived any defect are without merit. Nothing in the record shows the misdirected claim Knapp filed with the County of Los Angeles was ever forwarded to PCHS or LAUSD. Because neither PCHS nor LAUSD actually received that claim, neither could have waived its defects.

Appendix B

The letters, e-mail and phone calls from Knapp to Hosford were not sufficient to establish a claim under the Government Claims Act. The February 6, 2004 statement forwarded by Knapp to Hosford stated only that she "really didn't like what happened" and "wish[ed] it didn't happen." An e-mail sent on the same day by Dr. Knapp to Hosford requested her to call and gave notice that he had "spoken with" attorney Edwin Carney "but would like to proceed in as civil a manner as possible." The February 9, 2004 letter from Carney to Hosford requested "a meeting" with the principal and the "school's/district's counsel." The February 18, 2004 letter from Dr. Knapp to Hosford expressed disappointment that PCHS had "no interest in negotiating" a way to "resolve this situation," and advised that "[t]he matter has been turned over to our attorney and a resolution will be reached through the legal process." In none of these vaguely worded communications did Knapp meet the statutory requirements of a claim pursuant to section 910. Thus, Knapp has failed to establish as a matter of law that she substantially complied with the Government Claims Act.

III. KNAPP FAILED TO MEET HER BURDEN OF SHOWING THE EXISTENCE OF A TRIABLE ISSUE OF FACT THAT SHE WAS EXCUSED FROM FILING A CLAIM WITH LAUSD OR PCHS

Knapp contends she is excused from filing the government claim, because PCHS is an independent entity from LAUSD, and because PCHS did not file the requisite information with the Secretary of State and the county clerk for listing on the Roster of Public Agencies. As explained below, after examining the Charter Schools Act and the

prerequisites for registration with the Secretary of State and county clerk, we determine both that PCHS is a subdivision of LAUSD and that it need not be listed on the Roster of Public Agencies. As a result, we hold that Knapp should have filed her claim with LAUSD and is not excused from complying with the Government Claims Act.

A. The Charter Schools Act Assigns Control to LAUSD

The Charter Schools Act of 1992 (Ed.Code, § 47600 et seq.) provides for the establishment and operation of charter schools that operate independently of existing school districts, but are held accountable for their students' educational progress.[6] (See 56 Cal.Jur.3d (2004) Schools,

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6. The purpose of the Charter School Act is "to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following: [¶] (a) Improve pupil learning. [¶] (b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving. [¶] (c) Encourage the use of different and innovative teaching methods. [¶] (d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the schoolsite. [¶] (e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. [¶] (f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems. [¶] (g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools." (Ed.Code, § 47601.)

§ 214.) The charter establishing a charter school is a contract detailing the school's educational programs, goals, students served, measurable pupil outcomes and measurement methods, and the school's governance structure. (ed.code, § 47605, subd. (b)(5).) charters are granted for a specific term, typically not in excess of five years, by a school district, a county office of education, or the State Board of Education. At the end of the term, the entity granting the charter may renew the school's contract. (Ed.Code, § 47607.)

"[C]harter school officials are officers of public schools to the same extent as members of other boards of education of public school districts. So long as they administer charter schools according to the law and their charters, as they are presumed to do, they stand on the same constitutional footing as noncharter school board members. If they violate the law, the charter will be revoked." (*Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1141, 89 Cal.Rptr.2d 745.)

In 1998, the Attorney General interpreted the Charter Schools Act to mean that "a charter school may not be formed as a separate legal entity from the school district that granted the charter. Whether a charter school may exercise such independent legal rights as to sue and be sued . . . is governed by the provisions of the particular charter. (See [Ed.Code,] § 47601; 80 Ops.Cal.Atty.Gen. 52, 55-56 (1997).)" (81 Op.Cal.Atty.Gen. 140, 144 (1998).) "While a few of the provisions of the Act may suggest the possibility of a charter school's legal separation from a school district, the provisions of the Act in their entirety envision only an operational independence that is sufficient for the purposes sought to be accomplished. Provisions that could be construed as

consistent with legal separation include section 47610, relating to the general operation of a charter school: 'A charter school shall comply with all of the provisions set forth in its charter petition, but is otherwise exempt from the laws governing school districts except as specified in Sections 47611 and 41365.' [Fn. omitted.]"[7] (*Id.* at p. 141.)

Effective 1999, Education Code section 47604 was added to the Charter Schools Act to provide that "[c]harter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code)." (Cal. Ed.Code, § 47604, subd. (a); added by Stats.1998, ch. 34, § 3.)[8] The school district granting

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7. For example, under Education Code section 47610, relating to the general operation of a charter school: "A charter school shall comply with this part and all of the provisions set forth in its charter, but is otherwise exempt from the laws governing school districts, except all of the following: [¶] (a) As specified in Section 47611 [State Teacher's Retirement System]. [¶] (b) As specified in Section 41365 [allows charter schools that are not conversions of existing schools to obtain loans from the state upon approval of the Superintendent of Public Instruction]. [¶] (c) All laws establishing minimum age for public school attendance. [¶] (d) The California Building Code (Part 2 (commencing with Section 101) of Title 24 of the California Code of Regulations), as adopted and enforced by the local building enforcement agency with jurisdiction over the area in which the charter school is located. [¶] (e) Charter school facilities shall comply with subdivision (d) by January 1, 2007." (Ed.Code, § 47610.)

8. Public benefit corporations are formed for a public or charitable purpose. They are not operated for the mutual benefit of

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the charter is entitled to one representative on the board of directors. (*Ibid.*)

The court in *Wilson v. State Bd. of Education*, in addressing constitutional control over charter schools, observed that "constitutional control over charter schools, are in place whether a school elects to 'operate as, or be operated by, a nonprofit public benefit corporation' ([Ed.Code,] § 47604, subd. (a)), or whether it remains strictly under the legal umbrella of the chartering authority. In other words, even a school operated by a nonprofit could never stray from under the wings of the chartering authority, the Board, and the Superintendent. We note too that situating the locus of control with the public school system rather than the nonprofit is not incompatible with the laws governing nonprofit public benefit corporations. Specifically, one of their enumerated powers is to '[p]articipate with others in any partnership, joint venture or other association, transaction

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(Cont'd)

their members but for some broader good. Articles of incorporation containing specified information must be filed in order to form a public benefit corporation. (Corp.Code, §§ 5120-5122.) "For all purposes other than an action in the nature of quo warranto, a copy of the articles of a corporation duly certified by the Secretary of State is conclusive evidence of the formation of the corporation and prima facie evidence of its corporate existence." (Corp.Code, § 5133.) In addition, the bylaws "shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation" and "may contain any provision, not in conflict with law or the articles, the management of the activities and for the conduct of the affairs of the corporation, ..." (Corp.Code, § 5151, subds.(a), (c).)

or arrangement of any kind *whether or not such participation involves sharing or delegation of control with or to others.*' (Corp.Code, § 5140, subd. (j), italics added.)" (*Wilson v. State Bd. of Education*, (1999) 75 Cal.App.4th 1125, 1140, 89 Cal.Rptr.2d 745.) This language suggests that the locus of control generally rests with the school district, not the charter school that has incorporated as a nonprofit public benefit corporation.

B. PCHS Did Not Need to File in the Roster of Public Agencies

For purposes of the Roster of Public Agencies, "public agency" "means a district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the state or a county, city and county, or city." (§ 53050.) Knapp asserts that PCHS is such an agency, and was required to file in the Roster. Its failure to do so, she argues, bars the application of the Governmental Claims Act, citing as her primary authority *Wilson v. San Francisco Redevelopment Agency* (1977) 19 Cal.3d 555, 138 Cal.Rptr. 720, 564 P.2d 872, which held that "substantial noncompliance by the agency with the requirements of section 53051 unconditionally excuses the claimant from filing a claim." (*Id.* at p. 560, 138 Cal.Rptr. 720, 564 P.2d 872.)[9] There, the injured plaintiff filed his damage claim

9. "Under section 946.4, subdivision (a), . . . a failure to file a claim does not bar an action against the public agency if, during the period of 70 days immediately after the cause of action accrues, the agency has failed to file in the Roster of Public Agencies, in the office of the Secretary of State and with the county clerk, information

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under the Government Claims Act against the wrong public entity. His injury claim was not timely against the agency as required by section 911.2. (*Id.* at p. 558-559, 138 Cal.Rptr. 720, 564 P.2d 872.) Because the agency had failed to supply timely information pursuant to section 53051 to the Roster of Public Agencies as required by section 946.4, the Supreme Court held the complaint alleged a valid excuse for plaintiff's failure to file a timely claim. (*Id.* at p. 560, 138 Cal.Rptr. 720, 564 P.2d 872.) However, *Wilson v. San Francisco Redevelopment Agency* is inapposite to the facts here, because a charter school is not analogous to a redevelopment agency. "In general, a redevelopment agency is a separate legal entity from the city that established it, and the city is not liable for the debts of the agency. [Citation.]" (*County of Solano v.*

(Cont'd)
concerning itself which substantially conforms to the requirements of section 53051. The latter section, in turn, requires that within 70 days after its creation the governing board of each agency shall file with the Secretary of State and the clerks of those counties in which it maintains an office a statement containing (1) its name and address, (2) the name and address of each member of the governing board, and (3) the name, title and address of the officers. Within 10 days of any change in the foregoing data, an amended statement reflecting the changes must be filed." (*Wilson v. San Francisco Redevelopment Agency, supra,* 19 Cal.3d 555, 557-558, 138 Cal.Rptr. 720, 564 P.2d 872; see § 53051.) "[O]ne of the probable legislative purposes underlying section 946.4 is to assure compliance by public entities with section 53051 thus supplying correct and complete information to the Roster of Public Agencies." (*Wilson v. San Francisco Redevelopment Agency, supra,* 19 Cal.3d at p. 558, 138 Cal.Rptr. 720, 564 P.2d 872.) Thus, "to serve such purpose, section 946.4 should be construed to excuse plaintiff's noncompliance" with the Government Claim Act. (*Ibid.*)

Appendix B

Vallejo Redevelopment Agency (1999) 75 Cal.App.4th 1262, 1267, 90 Cal.Rptr.2d 41.)

Hovd v. Hayward Unified Sch. Dist. (1977) 74 Cal.App.3d 470, 141 Cal.Rptr. 527 is more instructive on the facts here. *Hovd* involved an action against a vocational skills center of a school district. There, the court held that the center was "not a public agency within the meaning of sections 53050 and 53051. The language of section 53050 does not reflect a legislative intent that the article apply to subdivisions of a district, such as the Vocational Skills Center. Furthermore, section 53051, which requires a statement of the name and address of the governing board, as well as those of its officers, is clearly directed toward the governing body of a public agency, and not to its subdivisions." (*Id.* at p. 472, 141 Cal.Rptr. 527.)

While the charter of PCHS provides an indemnification clause that holds LAUSD harmless from the defense of any claims, liabilities or legal proceedings that arise from the acts of PCHS officers or employees,[10] a plain reading of that

10. "Hold Harmless/Indemnification. [¶] The charter school does hereby agree, at its own expense, to indemnify, defend, and hold the District, its officers and employees harmless from and against any and all claims, liabilities, or legal proceedings brought by any person or entity whatsoever, arising from, or relating to the charter agreement. The charter school further agrees to indemnify, defend, and hold the District, its officers and employees harmless from and against claims, liabilities, or legal proceedings brought by any person or entity if such claims, liabilities, or proceedings arise from or relate to acts or omissions of acts committed by the charter school, its officers, or its employees. [¶] The charter school shall be responsible at its own expense for defending any claims, liabilities, or legal proceedings brought against the charter school by any person or entity."

clause shows the parties intended only for LAUSD to enforce the indemnification clause as the grantor of the charter. The indemnification clause does not change the essential relationship between the school district and the charter school, whose independence is enumerated, temporal and conditional.

We hold that as a subdivision of LAUSD, PCHS is not a public agency within the meaning of section 53050 separately required to register with the Secretary of State and the county clerk for the Roster of Public Agencies.[11] Neither would PCHS's incorporation as a nonprofit public benefit corporation, assuming that were the case, change this relationship. On her appeal, as before the trial court, Knapp has not provided in the record any evidence that would suggest otherwise. Thus, while PCHS and LAUSD are independent legal entities, we conclude that PCHS is a subdivision of its chartering authority, because its existence, funding and charter depend on LAUSD. Our conclusion comports with the prevailing view that charter schools are operationally rather than legally independent from their chartering authorities.

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11. The Supreme Court has granted review in a case that presents the following question: "Is a *public entity, such as a charter school*, a 'person' within the meaning of the False Claim Act (Gov.Code, [§] 12560 et seq.) and thus subject to a qui tam cause of action for allegedly obtaining payments from the state to which it was not entitled?" (See *Wells v. One2One Learning Foundation* (2004) 116 Cal.App.4th 515, 10 Cal.Rptr.3d 456, review granted June 8, 2004, S123951, italics added.) The charter schools in that case were incorporated and/or operated by nonprofit public benefit corporations, and were not listed on the Roster of Public Agencies. (*Id.* at p. 530.)

We agree with the trial court that Knapp had an obligation to file her claim with LAUSD and failed to do so. Knapp is not otherwise excused from compliance with the Government Claims Act. Accordingly, we affirm.[12]

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal. CERTIFIED FOR PUBLICATION

ZELON, J.

We concur:

PERLUSS, P.J.

WOODS, J.

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12. Having determined this threshold question, we do not need to reach the remaining issue on damages.

APPENDIX C — ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING PETITION FOR REHEARING FILED MARCH 28, 2007

Court of Appeal, Second Appellate District,
Div. 7 - No. B185996
S150364

IN THE SUPREME COURT OF CALIFORNIA
En Banc

COURTNEY KNAPP, a Miner, etc.,

Plaintiff and Appellant,

v.

PALISADES CHARTER HIGH SCHOOL et al.,

Defendants and Respondents.

The petition for review is DENIED.

[stamped] GEORGE
Chief Justice